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In re Application of :
Herz et al. : **OFFICE OF PETITIONS**
Application Number: 09/024278 : **DECISION ON PETITION**
Filing Date: 02/17/1998 :
Attorney Docket Number: :
6099/008 :

This is a decision in reference to the "PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 C.F.R. § 1.181," filed on March 25, 2009.

The petition is **GRANTED**.

The application was held abandoned on September 19, 2007, for failure to timely respond to the non-final Office action mailed on June 18, 2007, which set a three (3)-month statutory period for reply. Notice of Abandonment was mailed on August 18, 2008.¹

Petitioner asserts that the non-final Office action mailed on June 18, 2007, was never received because it was sent to an old correspondence address.

Specifically, petitioner asserts that new counsel filed a Revocation of Power of Attorney and New Power of Attorney and Change of Correspondence Address on July 26, 2005.² Petitioner avers that the Notice of Allowance and Fee(s) Due and the Notice of Abandonment were subsequently both mailed to the old correspondence address.

In the absence of any irregularity in the mailing of the non-final Office action, there is a strong presumption that the non-final Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the non-final Office action was not in fact received.

¹ The Notice of Abandonment was returned as undeliverable to the USPTO on August 28, 2008.

² It is noted that a Decision on Petition was mailed on December 18, 2006 to the new correspondence address as noted in the revocation and power of attorney filed on July 26, 2005. The change of correspondence address was apparently not entered in Office records, however, as the non-final Office action subsequently mailed on September 19, 2007, was mailed to the old correspondence address.

A review of the official file reveals that a power of attorney and change of correspondence address were filed on July 26, 2005, but that the power of attorney and change of correspondence address was not entered. Consequently, the non-final Office action mailed on June 18, 2007 (and the Notice of Abandonment) were mailed to the old correspondence address.

As such, the showing of record is that the Office erred in mailing the non-final Office action mailed on June 18, 2007, to the previous address rather than the current correspondence address.

The petitioner has made a sufficient showing of nonreceipt of the Notice of Allowance and Fee(s) Due. As such, there is no abandonment in fact. The holding of abandonment is withdrawn, and the Notice of Abandonment is vacated.

As the present petition was not necessitated by an error on the part of petitioner, no fee is due.

Receipt of the power of attorney and change of correspondence address is acknowledged. A Notice Regarding Change of Power of Attorney and a Notice of Acceptance of Power of Attorney will be mailed under separate cover.

The petition is GRANTED.

The application file is being referred to the Technology Center Art Unit 2623 for remailing of the non-final Office action mailed on June 18, 2007. The period for reply will be reset from the mailing date thereof.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



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